

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JASON BROWN,

Petitioner,

No. CIV S-05-0866 FCD EFB P

vs.

DIANA K. BUTLER, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

Petitioner is a prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C.

§ 2254. On October 4, 2006, respondent moved to dismiss the petition on the ground that it is mixed, i.e., it contains both exhausted and unexhausted claims. On November 3, 2006, petitioner filed an opposition. On July 10, 2007, the court found that the petition is mixed and gave petitioner 30 days to request that the court stay this action and hold it in abeyance while he presents his unexhausted claim to the state court. The court warned petitioner that failure to seek stay and abeyance would result in a recommendation that this action be dismissed without prejudice. On July 25, 2007, petitioner requested that the district judge reconsider this order. On August 13, 2007, petitioner sought an extension of time to seek stay and abeyance. On August 21, 2007, the district judge affirmed the order finding the petition is mixed. On August 22, 2007, the court granted petitioner 20 days to seek a stay and abeyance, and warned petitioner

1 that his failure to comply with the new deadline would result in a recommendation that this
2 action be dismissed without prejudice.

3 The 20 days have passed and petitioner has not filed a request that this court stay this
4 action and hold it in abeyance. Therefore, this action must be dismissed without prejudice. *See*
5 *Rose v. Lundy*, 455 U.S. 509, 522 (1982).

6 Accordingly, it is hereby RECOMMENDED that respondent's October 4, 2006, motion
7 to dismiss be granted and that this action be dismissed without prejudice.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
13 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
14 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: September 21, 2007.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE

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